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House Engrossed Senate Bill

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1160

AN ACT

AMENDING SECTIONS 5-395.01, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.01, Arizona Revised Statutes, is amended to
3 read:

4 5-395.01. Operating or in actual physical control of a
5 motorized watercraft while intoxicated:
6 classification: penalties

7 A. A person who is convicted of a violation of section 5-395 is guilty
8 of a class 1 misdemeanor. The person shall pay a fine of not less than two
9 hundred fifty dollars. In addition to any other penalties under this
10 section, the judge shall order the person to complete alcohol or other drug
11 screening that is provided by a facility approved by the department of health
12 services or a probation department. If a judge determines that the person
13 requires further alcohol or other drug education or treatment, the person may
14 be required pursuant to court order to obtain alcohol or other drug education
15 or treatment under the court's supervision from an approved facility. The
16 judge may review an education or treatment determination at the request of
17 the state or the defendant or on the judge's initiative. The person shall
18 pay the costs of the screening, education or treatment unless the court
19 waives part or all of the costs.

20 B. Except as provided in section 5-398.01, the court may suspend any
21 imposed sentence for a first violation of section 5-395 if the person
22 completes a court ordered alcohol or other drug screening, education or
23 treatment program. If the person fails to complete the court ordered alcohol
24 or other drug screening, education or treatment program and has not been
25 placed on probation, the court shall issue an order to show cause to the
26 defendant as to why the remaining jail sentence should not be served.

27 C. A court may order a person sentenced pursuant to this section to
28 perform community service.

29 D. Notwithstanding subsection B of this section, if within a period of
30 sixty months a person is convicted of a second violation of section 5-395 or
31 is convicted of a violation of section 5-395 and has previously been
32 convicted of an act in another state that if committed in this state would be
33 a violation of section 5-395, the person shall be sentenced to serve not less
34 than ninety days in jail, thirty days of which shall be served consecutively,
35 and the person is not eligible for probation or suspension of execution of
36 sentence unless the entire sentence has been served, except that the judge
37 may suspend at the time of sentencing all but thirty days of the sentence if
38 the person completes a court ordered alcohol or other drug screening,
39 education or treatment program. If the person fails to complete the court
40 ordered alcohol or other drug screening, education or treatment program and
41 has not been placed on probation, the court shall issue an order to show
42 cause as to why the remaining jail sentence should not be served. The judge
43 shall order the person to pay a fine of not less than five hundred dollars.

44 E. The dates of the commission of the offense are the determining
45 factor in applying the sixty month provision of subsection D of this section,
46 irrespective of the sequence in which the offenses were committed. A second

1 violation for which a conviction occurs as provided in this section shall not
2 include a conviction for an offense arising out of the same series of acts.

3 F. If a person is referred to a screening or treatment facility, that
4 facility shall report to the court whether the person has successfully
5 completed the screening, education or treatment program.

6 G. Any political subdivision processing or utilizing the services of a
7 person ordered to perform community service pursuant to this section does not
8 incur any civil liability to the person ordered to perform community service
9 as a result of these activities unless the political subdivision or its agent
10 or employee acts with gross negligence.

11 H. After a person who is sentenced pursuant to subsection B of this
12 section has served twenty-four consecutive hours in jail or after a person
13 who is sentenced pursuant to subsection D of this section has served
14 forty-eight consecutive hours in jail and after receiving confirmation that
15 the person is employed or is a student, the court, on pronouncement of any
16 jail sentence under this section, may provide in the sentence that the person
17 may be permitted, if the person is employed or is a student and can continue
18 the person's employment or studies, to continue such employment or studies
19 for not more than twelve hours per day nor more than five days per week, and
20 the remaining day, days or parts of days shall be spent in jail until the
21 sentence is served. The person shall be allowed out of jail only long enough
22 to complete the actual hours of employment or studies and no longer.

23 I. A person sentenced pursuant to this section is eligible for a home
24 detention program pursuant to the provisions of section 9-499.07, subsections
25 M through R or section 11-459, subsections L through Q.

26 J. The court shall allow the allegation of a prior conviction or other
27 pending charge of a violation of section 5-395 filed twenty or more days
28 before the date the case is actually tried and may allow the allegation of a
29 prior conviction or other pending charge of a violation of section 5-395
30 filed any time before the date the case is actually tried, provided that when
31 the allegation is filed this state must make available to the defendant a
32 copy of any information obtained concerning the prior conviction or other
33 pending charge. Any conviction may be used to enhance another conviction
34 irrespective of the dates on which the offenses occurred within the sixty
35 month provision.

36 K. If a person is placed on probation for violating section 5-395, the
37 probation shall be supervised unless the court finds that supervised
38 probation is not necessary or the court does not have supervisory probation
39 services.

40 L. Persons convicted pursuant to section 5-395 shall pay an additional
41 assessment of five hundred dollars or for a second violation pursuant to
42 subsection D of this section shall pay an additional assessment of one
43 thousand two hundred fifty dollars to be deposited by the state treasurer in
44 the prison construction and operations fund established by section
45 41-1651. These assessments are not subject to any surcharge. If the
46 conviction occurred in the superior court or a justice court, the court shall

1 transmit the assessed monies to the county treasurer. If the conviction
2 occurred in a municipal court, the court shall transmit the assessed monies
3 to the city treasurer. The city or county treasurer shall transmit the
4 monies received to the state treasurer.

5 M. PERSONS CONVICTED PURSUANT TO SECTION 5-395 SHALL PAY AN ADDITIONAL
6 ASSESSMENT OF FIVE HUNDRED DOLLARS OR FOR A SECOND VIOLATION PURSUANT TO
7 SUBSECTION D OF THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
8 THOUSAND TWO HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN
9 THE STATE GENERAL FUND. THESE ASSESSMENTS ARE NOT SUBJECT TO ANY SURCHARGE.
10 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE
11 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE
12 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE
13 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL
14 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

15 Sec. 2. Section 5-396, Arizona Revised Statutes, is amended to read:

16 5-396. Aggravated operating or actual physical control of
17 motorized watercraft while under the influence of
18 intoxicating liquor or drugs; classification

19 A. A person is guilty of aggravated operating or actual physical
20 control of a motorized watercraft that is underway while under the influence
21 of intoxicating liquor or drugs if the person commits a third or subsequent
22 violation of section 5-395 or 5-397 or this section or is convicted of a
23 violation of section 5-395 or 5-397 or this section and has previously been
24 convicted of any combination of convictions of section 5-395 or 5-397 or this
25 section or acts committed in another state that if committed in this state
26 would be a violation of section 5-395 or 5-397 or this section within a
27 period of sixty months.

28 B. The dates of the commission of the offenses are the determining
29 factor in applying the sixty month provision provided in subsection A of this
30 section regardless of the sequence in which the offenses were committed. For
31 purposes of this section, a third or subsequent violation for which a
32 conviction occurs does not include a conviction for an offense arising out of
33 the same series of acts.

34 C. Aggravated operating or actual physical control of a motorized
35 watercraft that is underway while under the influence of intoxicating liquor
36 or drugs is a class 4 felony.

37 D. Notwithstanding section 41-1604.06, a person who is convicted under
38 subsection A of this section and who within a sixty month period has been
39 convicted of two prior violations of section 5-395 or 5-397 or this section,
40 or acts committed in another state that if committed in this state would be a
41 violation of section 5-395 or 5-397 or this section, is not eligible for
42 probation, pardon, commutation or suspension of sentence or release on any
43 other basis until the person has served not less than four months in prison.

44 E. Notwithstanding section 41-1604.06, a person who is convicted under
45 subsection A of this section and who within a sixty month period has been
46 convicted of three or more prior violations of section 5-395 or 5-397 or this

1 section, or acts committed in another state that if committed in this state
2 would be a violation of section 5-395 or 5-397 or this section, is not
3 eligible for probation, pardon, commutation or suspension of sentence or
4 release on any other basis until the person has served not less than eight
5 months in prison.

6 F. A person who is convicted of a violation of this section and who is
7 placed on probation shall attend and complete alcohol or drug screening,
8 counseling and education from an approved facility, ~~and,~~ if ordered by the
9 court, treatment from an approved facility. If the person fails to comply
10 with ~~the provisions of~~ this subsection, in addition to ~~the provisions of~~
11 section 13-901 the court may order that the person be incarcerated as a term
12 of probation as follows:

13 1. For a person sentenced pursuant to subsection D of this section,
14 for an individual period of not more than four months and a total period of
15 not more than one year.

16 2. For a person sentenced pursuant to subsection E of this section,
17 for an individual period of not more than eight months and a total period of
18 not more than two years.

19 G. The time that a person spends in custody pursuant to subsection D,
20 E or F of this section shall not be counted toward the sentence imposed if
21 the person's probation is revoked and the person is sentenced to prison
22 following revocation of probation.

23 H. A person convicted of a violation of this section shall pay a fine
24 of not less than seven hundred fifty dollars.

25 I. In addition to any other penalty prescribed by law, persons
26 convicted pursuant to this section shall pay an additional assessment of one
27 thousand five hundred dollars to be deposited by the state treasurer in the
28 prison construction and operations fund established by section 41-1651. This
29 assessment is not subject to any surcharge. If the conviction occurred in
30 the superior court or a justice court, the court shall transmit the assessed
31 monies to the county treasurer. If the conviction occurred in a municipal
32 court, the court shall transmit the assessed monies to the city treasurer.
33 The city or county treasurer shall transmit the monies received to the state
34 treasurer.

35 J. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, PERSONS
36 CONVICTED PURSUANT TO THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
37 THOUSAND FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE
38 STATE GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
39 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
40 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
41 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES
42 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
43 MONIES RECEIVED TO THE STATE TREASURER.

44 Sec. 3. Section 5-397, Arizona Revised Statutes, is amended to read:

45 5-397. Operating or in actual physical control of a motorized
46 watercraft while under the extreme influence of

intoxicating liquor: trial by jury: sentencing:
classification: definition

A. It is unlawful for a person to operate or be in actual physical control of a motorized watercraft that is underway within this state if the person has an alcohol concentration of 0.15 or more within two hours of operating or being in actual physical control of the motorized watercraft and the alcohol concentration results from alcohol consumed either before or while operating or being in actual physical control of the motorized watercraft.

B. A person who is convicted of a violation of this section is guilty of operating or being in actual physical control of a motorized watercraft while under the extreme influence of alcohol.

C. At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.

D. A person who is convicted of a violation of this section:

1. Shall be sentenced to serve not less than thirty consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served.

2. Shall pay a fine of not less than two hundred fifty dollars.

3. May be ordered by a court to perform community service.

4. Shall pay an additional assessment of one thousand dollars to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

E. Notwithstanding subsection D, paragraph 1 of this section, at the time of sentencing the judge may suspend all but ten days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

1 F. If within a period of sixty months a person is convicted of a
2 second violation of this section or is convicted of a violation of this
3 section and has previously been convicted of a violation of section 5-395 or
4 5-396 or an act in another jurisdiction that if committed in this state would
5 be a violation of this section or section 5-395 or 5-396, the person:

6 1. Shall be sentenced to serve not less than one hundred twenty days
7 in jail, sixty days of which shall be served consecutively, and is not
8 eligible for probation or suspension of execution of sentence unless the
9 entire sentence has been served.

10 2. Shall pay a fine of not less than five hundred dollars.

11 3. May be ordered by a court to perform community service.

12 4. Shall pay an additional assessment of one thousand two hundred
13 fifty dollars to be deposited by the state treasurer in the prison
14 construction and operations fund established by section 41-1651. This
15 assessment is not subject to any surcharge. If the conviction occurred in
16 the superior court or a justice court, the court shall transmit the assessed
17 monies to the county treasurer. If the conviction occurred in a municipal
18 court, the court shall transmit the assessed monies to the city treasurer.
19 The city or county treasurer shall transmit the monies received to the state
20 treasurer.

21 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
22 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
23 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
24 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
25 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
26 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
27 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
28 THE STATE TREASURER.

29 G. Notwithstanding subsection F, paragraph 1 of this section, at the
30 time of sentencing, the judge may suspend all but sixty days of the sentence
31 if the person completes a court ordered alcohol or other drug screening,
32 education or treatment program. If the person fails to complete the court
33 ordered alcohol or other drug screening, education or treatment program and
34 has not been placed on probation, the court shall issue an order to show
35 cause as to why the remaining jail sentence should not be served.

36 H. In applying the sixty month provision of subsection F of this
37 section, the dates of the commission of the offense shall be the determining
38 factor, irrespective of the sequence in which the offenses were committed.

39 I. A second violation for which a conviction occurs as provided in
40 this section shall not include a conviction for an offense arising out of the
41 same series of acts.

42 J. A person who is convicted of a violation of this section is guilty
43 of a class 1 misdemeanor.

44 K. For the purposes of this section, "alcohol concentration" means
45 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
46 two hundred ten liters of breath.

1 Sec. 4. Section 28-1381, Arizona Revised Statutes, is amended to read:

2 28-1381. Driving or actual physical control while under the
3 influence; trial by jury; presumptions; admissible
4 evidence; sentencing; classification

5 A. It is unlawful for a person to drive or be in actual physical
6 control of a vehicle in this state under any of the following circumstances:

7 1. While under the influence of intoxicating liquor, any drug, a vapor
8 releasing substance containing a toxic substance or any combination of
9 liquor, drugs or vapor releasing substances if the person is impaired to the
10 slightest degree.

11 2. If the person has an alcohol concentration of 0.08 or more within
12 two hours of driving or being in actual physical control of the vehicle and
13 the alcohol concentration results from alcohol consumed either before or
14 while driving or being in actual physical control of the vehicle.

15 3. While there is any drug defined in section 13-3401 or its
16 metabolite in the person's body.

17 4. If the vehicle is a commercial motor vehicle that requires a person
18 to obtain a commercial driver license as defined in section 28-3001 and the
19 person has an alcohol concentration of 0.04 or more.

20 B. It is not a defense to a charge of a violation of subsection A,
21 paragraph 1 of this section that the person is or has been entitled to use
22 the drug under the laws of this state.

23 C. A person who is convicted of a violation of this section is guilty
24 of a class 1 misdemeanor.

25 D. A person using a drug prescribed by a medical practitioner licensed
26 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
27 subsection A, paragraph 3 of this section.

28 E. In any prosecution for a violation of this section, the state shall
29 allege, for the purpose of classification and sentencing pursuant to this
30 section, all prior convictions of violating this section, section 28-1382 or
31 section 28-1383 occurring within the past thirty-six months, unless there is
32 an insufficient legal or factual basis to do so.

33 F. At the arraignment, the court shall inform the defendant that the
34 defendant may request a trial by jury and that the request, if made, shall be
35 granted.

36 G. In a trial, action or proceeding for a violation of this section or
37 section 28-1383 other than a trial, action or proceeding involving driving or
38 being in actual physical control of a commercial vehicle, the defendant's
39 alcohol concentration within two hours of the time of driving or being in
40 actual physical control as shown by analysis of the defendant's blood, breath
41 or other bodily substance gives rise to the following presumptions:

42 1. If there was at that time 0.05 or less alcohol concentration in the
43 defendant's blood, breath or other bodily substance, it may be presumed that
44 the defendant was not under the influence of intoxicating liquor.

45 2. If there was at that time in excess of 0.05 but less than 0.08
46 alcohol concentration in the defendant's blood, breath or other bodily

1 substance, that fact shall not give rise to a presumption that the defendant
2 was or was not under the influence of intoxicating liquor, but that fact may
3 be considered with other competent evidence in determining the guilt or
4 innocence of the defendant.

5 3. If there was at that time 0.08 or more alcohol concentration in the
6 defendant's blood, breath or other bodily substance, it may be presumed that
7 the defendant was under the influence of intoxicating liquor.

8 H. Subsection G of this section does not limit the introduction of any
9 other competent evidence bearing on the question of whether or not the
10 defendant was under the influence of intoxicating liquor.

11 I. A person who is convicted of a violation of this section:

12 1. Shall be sentenced to serve not less than ten consecutive days in
13 jail and is not eligible for probation or suspension of execution of sentence
14 unless the entire sentence is served.

15 2. Shall pay a fine of not less than two hundred fifty dollars.

16 3. May be ordered by a court to perform community service.

17 4. Shall pay an additional assessment of five hundred dollars to be
18 deposited by the state treasurer in the prison construction and operations
19 fund established by section 41-1651. This assessment is not subject to any
20 surcharge. If the conviction occurred in the superior court or a justice
21 court, the court shall transmit the assessed monies to the county
22 treasurer. If the conviction occurred in a municipal court, the court shall
23 transmit the assessed monies to the city treasurer. The city or county
24 treasurer shall transmit the monies received to the state treasurer.

25 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE
26 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
27 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
28 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
29 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
30 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
31 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

32 J. Notwithstanding subsection I, paragraph 1 of this section, at the
33 time of sentencing the judge may suspend all but twenty-four consecutive
34 hours of the sentence if the person completes a court ordered alcohol or
35 other drug screening, education or treatment program. If the person fails to
36 complete the court ordered alcohol or other drug screening, education or
37 treatment program and has not been placed on probation, the court shall issue
38 an order to show cause to the defendant as to why the remaining jail sentence
39 should not be served.

40 K. If within a period of sixty months a person is convicted of a
41 second violation of this section or is convicted of a violation of this
42 section and has previously been convicted of a violation of section 28-1382
43 or 28-1383 or an act in another jurisdiction that if committed in this state
44 would be a violation of this section or section 28-1382 or 28-1383, the
45 person:

1 1. Shall be sentenced to serve not less than ninety days in jail,
2 thirty days of which shall be served consecutively, and is not eligible for
3 probation or suspension of execution of sentence unless the entire sentence
4 has been served.

5 2. Shall pay a fine of not less than five hundred dollars.

6 3. May be ordered by a court to perform community service.

7 4. Shall have the person's driving privilege revoked for one year. The
8 court shall report the conviction to the department. On receipt of the
9 report, the department shall revoke the person's driving privilege and shall
10 require the person to equip any motor vehicle the person operates with a
11 certified ignition interlock device pursuant to section 28-3319. In
12 addition, the court may order the person to equip any motor vehicle the
13 person operates with a certified ignition interlock device for more than
14 twelve months beginning on the date of reinstatement of the person's driving
15 privilege following a suspension or revocation or on the date of the
16 department's receipt of the report of conviction, whichever occurs
17 later. The person who operates a motor vehicle with a certified ignition
18 interlock device under this paragraph shall comply with article 5 of this
19 chapter.

20 5. Shall pay an additional assessment of one thousand two hundred
21 fifty dollars to be deposited by the state treasurer in the prison
22 construction and operations fund established by section 41-1651. This
23 assessment is not subject to any surcharge. If the conviction occurred in
24 the superior court or a justice court, the court shall transmit the assessed
25 monies to the county treasurer. If the conviction occurred in a municipal
26 court, the court shall transmit the assessed monies to the city
27 treasurer. The city or county treasurer shall transmit the monies received
28 to the state treasurer.

29 6. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
30 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
31 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
32 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
33 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
34 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
35 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED
36 TO THE STATE TREASURER.

37 L. Notwithstanding subsection K, paragraph 1 of this section, at the
38 time of sentencing, the judge may suspend all but thirty days of the sentence
39 if the person completes a court ordered alcohol or other drug screening,
40 education or treatment program. If the person fails to complete the court
41 ordered alcohol or other drug screening, education or treatment program and
42 has not been placed on probation, the court shall issue an order to show
43 cause as to why the remaining jail sentence should not be served.

44 M. In applying the sixty month provision of subsection K of this
45 section, the dates of the commission of the offense shall be the determining
46 factor, irrespective of the sequence in which the offenses were committed.

1 N. A second violation for which a conviction occurs as provided in
2 this section shall not include a conviction for an offense arising out of the
3 same series of acts.

4 Sec. 5. Section 28-1382, Arizona Revised Statutes, is amended to read:

5 28-1382. Driving or actual physical control while under the
6 extreme influence of intoxicating liquor; trial by
7 jury; sentencing; classification

8 A. It is unlawful for a person to drive or be in actual physical
9 control of a vehicle in this state if the person has an alcohol concentration
10 of 0.15 or more within two hours of driving or being in actual physical
11 control of the vehicle and the alcohol concentration results from alcohol
12 consumed either before or while driving or being in actual physical control
13 of the vehicle.

14 B. A person who is convicted of a violation of this section is guilty
15 of driving or being in actual physical control of a vehicle while under the
16 extreme influence of intoxicating liquor.

17 C. At the arraignment, the court shall inform the defendant that the
18 defendant may request a trial by jury and that the request, if made, shall be
19 granted.

20 D. A person who is convicted of a violation of this section:

21 1. Shall be sentenced to serve not less than thirty consecutive days
22 in jail and is not eligible for probation or suspension of execution of
23 sentence unless the entire sentence is served.

24 2. Shall pay a fine of not less than two hundred fifty dollars. The
25 fine prescribed in this paragraph and any assessments, restitution and
26 incarceration costs shall be paid before the assessment prescribed in
27 paragraph 3 of this subsection.

28 3. Shall pay an additional assessment of two hundred fifty dollars. If
29 the conviction occurred in the superior court or a justice court, the court
30 shall transmit the monies received pursuant to this paragraph to the county
31 treasurer. If the conviction occurred in a municipal court, the court shall
32 transmit the monies received pursuant to this paragraph to the city
33 treasurer. The city or county treasurer shall transmit the monies received to
34 the state treasurer. The state treasurer shall deposit the monies received
35 in the driving under the influence abatement fund established by section
36 28-1304.

37 4. May be ordered by a court to perform community service.

38 5. Shall be required by the department, on receipt of the report of
39 conviction, to equip any motor vehicle the person operates with a certified
40 ignition interlock device pursuant to section 28-3319. In addition, the
41 court may order the person to equip any motor vehicle the person operates
42 with a certified ignition interlock device for more than twelve months
43 beginning on the date of reinstatement of the person's driving privilege
44 following a suspension or revocation or on the date of the department's
45 receipt of the report of conviction, whichever occurs later. The person who

1 operates a motor vehicle with a certified ignition interlock device under
2 this paragraph shall comply with article 5 of this chapter.

3 6. Shall pay an additional assessment of one thousand dollars to be
4 deposited by the state treasurer in the prison construction and operations
5 fund established by section 41-1651. This assessment is not subject to any
6 surcharge. If the conviction occurred in the superior court or a justice
7 court, the court shall transmit the assessed monies to the county
8 treasurer. If the conviction occurred in a municipal court, the court shall
9 transmit the assessed monies to the city treasurer. The city or county
10 treasurer shall transmit the monies received to the state treasurer.

11 7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
12 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
13 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
14 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
15 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
16 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
17 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

18 E. Notwithstanding subsection D, paragraph 1 of this section, at the
19 time of sentencing the judge may suspend all but ten days of the sentence if
20 the person completes a court ordered alcohol or other drug screening,
21 education or treatment program. If the person fails to complete the court
22 ordered alcohol or other drug screening, education or treatment program and
23 has not been placed on probation, the court shall issue an order to show
24 cause to the defendant as to why the remaining jail sentence should not be
25 served.

26 F. If within a period of sixty months a person is convicted of a
27 second violation of this section or is convicted of a violation of this
28 section and has previously been convicted of a violation of section 28-1381
29 or 28-1383 or an act in another jurisdiction that if committed in this state
30 would be a violation of this section or section 28-1381 or 28-1383, the
31 person:

32 1. Shall be sentenced to serve not less than one hundred twenty days
33 in jail, sixty days of which shall be served consecutively, and is not
34 eligible for probation or suspension of execution of sentence unless the
35 entire sentence has been served.

36 2. Shall pay a fine of not less than five hundred dollars. The fine
37 prescribed in this paragraph and any assessments, restitution and
38 incarceration costs shall be paid before the assessment prescribed in
39 paragraph 3 of this subsection.

40 3. Shall pay an additional assessment of two hundred fifty
41 dollars. If the conviction occurred in the superior court or a justice
42 court, the court shall transmit the monies received pursuant to this
43 paragraph to the county treasurer. If the conviction occurred in a municipal
44 court, the court shall transmit the monies received pursuant to this
45 paragraph to the city treasurer. The city or county treasurer shall transmit
46 the monies received to the state treasurer. The state treasurer shall

1 deposit the monies received in the driving under the influence abatement fund
2 established by section 28-1304.

3 4. May be ordered by a court to perform community service.

4 5. Shall have the person's driving privilege revoked for at least one
5 year. The court shall report the conviction to the department. On receipt
6 of the report, the department shall revoke the person's driving privilege and
7 shall require the person to equip any motor vehicle the person operates with
8 a certified ignition interlock device pursuant to section 28-3319. In
9 addition, the court may order the person to equip any motor vehicle the
10 person operates with a certified ignition interlock device for more than
11 twelve months beginning on the date of reinstatement of the person's driving
12 privilege following a suspension or revocation or on the date of the
13 department's receipt of the report of conviction, whichever is later. The
14 person who operates a motor vehicle with a certified ignition interlock
15 device under this paragraph shall comply with article 5 of this chapter.

16 6. Shall pay an additional assessment of one thousand two hundred
17 fifty dollars to be deposited by the state treasurer in the prison
18 construction and operations fund established by section 41-1651. This
19 assessment is not subject to any surcharge. If the conviction occurred in
20 the superior court or a justice court, the court shall transmit the assessed
21 monies to the county treasurer. If the conviction occurred in a municipal
22 court, the court shall transmit the assessed monies to the city treasurer.
23 The city or county treasurer shall transmit the monies received to the state
24 treasurer.

25 7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
26 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
27 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
28 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
29 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
30 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
31 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
32 THE STATE TREASURER.

33 G. Notwithstanding subsection F, paragraph 1 of this section, at the
34 time of sentencing, the judge may suspend all but sixty days of the sentence
35 if the person completes a court ordered alcohol or other drug screening,
36 education or treatment program. If the person fails to complete the court
37 ordered alcohol or other drug screening, education or treatment program and
38 has not been placed on probation, the court shall issue an order to show
39 cause as to why the remaining jail sentence should not be served.

40 H. In applying the sixty month provision of subsection F of this
41 section, the dates of the commission of the offense shall be the determining
42 factor, irrespective of the sequence in which the offenses were committed.

43 I. A second violation for which a conviction occurs as provided in
44 this section shall not include a conviction for an offense arising out of the
45 same series of acts.

1 J. A person who is convicted of a violation of this section is guilty
2 of a class 1 misdemeanor.

3 Sec. 6. Section 28-1383, Arizona Revised Statutes, is amended to read:
4 28-1383. Aggravated driving or actual physical control while
5 under the influence: violation: classification:
6 definition

7 A. A person is guilty of aggravated driving or actual physical control
8 while under the influence of intoxicating liquor or drugs if the person does
9 any of the following:

10 1. Commits a violation of section 28-1381, section 28-1382 or this
11 section while the person's driver license or privilege to drive is suspended,
12 canceled, revoked or refused or while a restriction is placed on the person's
13 driver license or privilege to drive as a result of violating section 28-1381
14 or 28-1382 or under section 28-1385.

15 2. Within a period of sixty months commits a third or subsequent
16 violation of section 28-1381, section 28-1382 or this section or is convicted
17 of a violation of section 28-1381, section 28-1382 or this section and has
18 previously been convicted of any combination of convictions of section
19 28-1381, section 28-1382 or this section or acts in another jurisdiction that
20 if committed in this state would be a violation of section 28-1381, section
21 28-1382 or this section.

22 3. While a person under fifteen years of age is in the vehicle,
23 commits a violation of either:

24 (a) Section 28-1381.

25 (b) Section 28-1382.

26 B. The dates of the commission of the offenses are the determining
27 factor in applying the sixty month provision provided in subsection A,
28 paragraph 2 of this section regardless of the sequence in which the offenses
29 were committed. For the purposes of this section, a third or subsequent
30 violation for which a conviction occurs does not include a conviction for an
31 offense arising out of the same series of acts.

32 C. The notice to a person of the suspension, cancellation, revocation
33 or refusal of a driver license or privilege to drive is effective as provided
34 in section 28-3318 or pursuant to the laws of the state issuing the license.

35 D. A person is not eligible for probation, pardon, commutation or
36 suspension of sentence or release on any other basis until the person has
37 served not less than four months in prison if the person is convicted under
38 either of the following:

39 1. Subsection A, paragraph 1 of this section.

40 2. Subsection A, paragraph 2 of this section and within a sixty month
41 period has been convicted of two prior violations of section 28-1381, section
42 28-1382 or this section, or any combination of those sections, or acts in
43 another jurisdiction that if committed in this state would be a violation of
44 section 28-1381, section 28-1382 or this section.

45 E. A person who is convicted under subsection A, paragraph 2 of this
46 section and who within a sixty month period has been convicted of three or

1 more prior violations of section 28-1381, section 28-1382 or this section, or
2 any combination of those sections, or acts in another jurisdiction that if
3 committed in this state would be a violation of section 28-1381, section
4 28-1382 or this section is not eligible for probation, pardon, commutation or
5 suspension of sentence or release on any other basis until the person has
6 served not less than eight months in prison.

7 F. In addition to any other penalty provided by law, a person who is
8 convicted under subsection A, paragraph 3, subdivision (a) of this section
9 shall be sentenced to at least the minimum sentence required pursuant to
10 section 28-1381, except that if a person has been convicted of at least two
11 prior violations of section 28-1381, section 28-1382 or this section, or any
12 combination of those sections, or convicted of at least two prior acts in
13 another jurisdiction that if committed in this state would be violations of
14 section 28-1381, section 28-1382 or this section, or any combination of those
15 sections, within a sixty month period, the person shall be sentenced to serve
16 at least the minimum sentence required pursuant to this section.

17 G. In addition to any other penalty provided by law, a person who is
18 convicted under subsection A, paragraph 3, subdivision (b) of this section
19 shall be sentenced to at least the minimum sentence required pursuant to
20 section 28-1382, except that if a person has been convicted of at least two
21 prior violations of section 28-1381, section 28-1382 or this section, or any
22 combination of those sections, or convicted of at least two prior acts in
23 another jurisdiction that if committed in this state would be a violation of
24 section 28-1381, section 28-1382 or this section, or any combination of those
25 sections, within a sixty month period, the person shall be sentenced to serve
26 at least the minimum sentence required pursuant to this section.

27 H. A person who is convicted of a violation of this section shall
28 attend and complete alcohol or other drug screening, education or treatment
29 from an approved facility. If the person fails to comply with this
30 subsection and is placed on probation, in addition to the provisions of
31 section 13-901 the court may order that the person be incarcerated as a term
32 of probation as follows:

33 1. For a person sentenced pursuant to subsection D of this section,
34 for an individual period of not more than four months and a total period of
35 not more than one year.

36 2. For a person sentenced pursuant to subsection E of this section,
37 for an individual period of not more than eight months and a total period of
38 not more than two years.

39 I. The time that a person spends in custody pursuant to subsection H
40 of this section shall not be counted towards the sentence imposed if the
41 person's probation is revoked and the person is sentenced to prison after
42 revocation of probation.

43 J. The court:

44 1. Shall report the conviction to the department. On receipt of the
45 report, the department shall revoke the driving privilege of the person. The
46 department shall not issue the person a new driver license within three years

1 of the date of the conviction and, for a conviction of a violation of
2 subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this
3 section, shall require the person to equip any motor vehicle the person
4 operates with a certified ignition interlock device pursuant to section
5 28-3319. In addition, the court may order the person to equip any motor
6 vehicle the person operates with a certified ignition interlock device for
7 more than twelve months beginning on the date of reinstatement of the
8 person's driving privilege following a suspension or revocation or on the
9 date of the department's receipt of the report of conviction, whichever
10 occurs later. The person who operates a motor vehicle with a certified
11 ignition interlock device under this paragraph shall comply with article 5 of
12 this chapter.

13 2. In addition to any other penalty prescribed by law, shall order the
14 person to pay an additional assessment of two hundred fifty dollars. If the
15 conviction occurred in the superior court or a justice court, the court shall
16 transmit the monies received pursuant to this paragraph to the county
17 treasurer. If the conviction occurred in a municipal court, the court shall
18 transmit the monies received pursuant to this paragraph to the city
19 treasurer. The city or county treasurer shall transmit the monies received
20 to the state treasurer. The state treasurer shall deposit the monies
21 received in the driving under the influence abatement fund established by
22 section 28-1304. Any fine imposed for a violation of this section and any
23 assessments, restitution and incarceration costs shall be paid before the
24 assessment prescribed in this paragraph.

25 3. Shall order the person to pay a fine of not less than seven hundred
26 fifty dollars.

27 4. In addition to any other penalty prescribed by law, shall order the
28 person to pay an additional assessment of one thousand five hundred dollars
29 to be deposited by the state treasurer in the prison construction and
30 operations fund established by section 41-1651. This assessment is not
31 subject to any surcharge. If the conviction occurred in the superior court
32 or a justice court, the court shall transmit the assessed monies to the
33 county treasurer. If the conviction occurred in a municipal court, the court
34 shall transmit the assessed monies to the city treasurer. The city or county
35 treasurer shall transmit the monies received to the state treasurer.

36 5. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE
37 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS
38 TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS
39 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
40 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
41 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
42 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
43 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
44 TREASURER.

45 K. Aggravated driving or actual physical control while under the
46 influence of intoxicating liquor or drugs committed under:

1 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

2 2. Subsection A, paragraph 3 of this section is a class 6 felony.

3 L. For the purposes of this section, "suspension, cancellation,
4 revocation or refusal" means any suspension, cancellation, revocation or
5 refusal.

6 Sec. 7. Section 28-8284, Arizona Revised Statutes, is amended to read:
7 28-8284. Violation; classification

8 A. A person who is convicted of a violation of section 28-8282 is
9 guilty of a class 1 misdemeanor and shall be sentenced to serve not less than
10 twenty-four consecutive hours in jail.

11 B. The court shall order the person to pay a fine of not less than two
12 hundred fifty dollars and may order the person to perform not less than eight
13 or more than twenty-four hours of community service.

14 C. A court shall not grant probation to or suspend any part or all of
15 the imposition or execution of a sentence required by this section, except on
16 the condition that the person serve not less than twenty-four consecutive
17 hours in jail and pay a fine of not less than two hundred fifty dollars.

18 D. The court:

19 1. Shall not excuse an offender from spending twenty-four consecutive
20 hours in jail.

21 2. May require the offender to attend traffic safety or alcohol abuse
22 classes at the offender's expense.

23 3. If in the court's opinion the offender has the problem of habitual
24 abuse of alcohol or drugs, shall require the offender to obtain treatment
25 under its supervision.

26 4. Shall order the offender to pay an additional assessment of five
27 hundred dollars to be deposited by the state treasurer in the prison
28 construction and operations fund established by section 41-1651. This
29 assessment is not subject to any surcharge. If the conviction occurred in
30 the superior court or a justice court, the court shall transmit the assessed
31 monies to the county treasurer. If the conviction occurred in a municipal
32 court, the court shall transmit the assessed monies to the city treasurer.
33 The city or county treasurer shall transmit the monies received to the state
34 treasurer.

35 5. SHALL ORDER THE OFFENDER TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
36 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
37 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
38 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
39 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
40 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
41 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
42 THE STATE TREASURER.

43 E. Notwithstanding subsection A of this section, the judge may
44 sentence a person pursuant to section 28-8286 instead of pursuant to
45 subsection A of this section, if all of the following conditions are met:

46 1. The person is convicted of a violation of section 28-8282.

1 2. The prosecutor alleges the provisions of this subsection.

2 3. The court finds that alternative sentencing will serve the best
3 interests of this state and that the person:

4 (a) Has not been convicted of one or more violations of section
5 28-8282 within sixty months of the date of commission of the acts out of
6 which the charges arose. The dates of commission of the offense are the
7 determining factor in applying this paragraph.

8 (b) Was not flying with 0.08 per cent or more by weight of alcohol in
9 the person's blood.

10 (c) Did not cause serious physical injury as defined in section 13-105
11 to another person during the same event or course of conduct that resulted in
12 the conviction for which the person is to be sentenced.

13 Sec. 8. Section 28-8286, Arizona Revised Statutes, is amended to read:
14 28-8286. Alternative sentencing

15 If pursuant to section 28-8284, subsection E a court orders a person
16 convicted of a violation of section 28-8282 to be sentenced pursuant to this
17 section, the court:

18 1. Shall order the person to pay a fine of not less than two hundred
19 fifty dollars.

20 2. May order the person to perform not less than eight or more than
21 twenty-four hours of community service.

22 3. May require the person to attend traffic safety or alcohol abuse
23 classes at the person's expense.

24 4. If in the court's opinion the person has the problem of habitual
25 abuse of alcohol or drugs, shall require the person to obtain treatment under
26 its supervision.

27 5. Shall not suspend any part or all of the imposition or execution of
28 any sentence required by this section.

29 6. Shall order the person to pay an additional assessment of five
30 hundred dollars to be deposited by the state treasurer in the prison
31 construction and operations fund established by section 41-1651. This
32 assessment is not subject to any surcharge. If the conviction occurred in
33 the superior court or a justice court, the court shall transmit the assessed
34 monies to the county treasurer. If the conviction occurred in a municipal
35 court, the court shall transmit the assessed monies to the city treasurer.
36 The city or county treasurer shall transmit the monies received to the state
37 treasurer.

38 7. SHALL ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
39 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
40 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
41 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
42 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
43 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
44 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
45 THE STATE TREASURER.

46 Sec. 9. Section 28-8287, Arizona Revised Statutes, is amended to read:

1 28-8287. Second offense

2 A. If a person is convicted of a second violation of section 28-8282
3 or is convicted of a violation of section 28-8282 and has previously been
4 convicted of an act in another state that if committed in this state would be
5 a violation of section 28-8282 within a period of sixty months:

6 1. The person is guilty of a class 1 misdemeanor.

7 2. The person shall be sentenced to serve not less than sixty days in
8 jail.

9 3. The court shall order the person to pay a fine of not less than
10 five hundred dollars.

11 4. The court shall not grant probation to or suspend any part or all
12 of the imposition or execution of any sentence required by this subsection,
13 except on the condition that the person serve not less than sixty days in
14 jail and pay a fine of not less than five hundred dollars.

15 5. If in the court's opinion the offender has the problem of habitual
16 abuse of alcohol or drugs, the court shall require the person to obtain
17 treatment under its supervision.

18 6. The person shall pay an additional assessment of one thousand two
19 hundred fifty dollars to be deposited by the state treasurer in the prison
20 construction and operations fund established by section 41-1651. This
21 assessment is not subject to any surcharge. If the conviction occurred in
22 the superior court or a justice court, the court shall transmit the assessed
23 monies to the county treasurer. If the conviction occurred in a municipal
24 court, the court shall transmit the assessed monies to the city
25 treasurer. The city or county treasurer shall transmit the monies received
26 to the state treasurer.

27 7. THE PERSON SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO
28 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE
29 GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
30 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
31 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
32 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES
33 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
34 MONIES RECEIVED TO THE STATE TREASURER.

35 B. The dates of the commission of the offense are the determining
36 factor in applying this section.

37 C. A second violation for which a conviction occurs as provided in
38 this section shall not include a conviction for an offense arising out of the
39 same series of acts.

40 Sec. 10. Section 28-8288, Arizona Revised Statutes, is amended to
41 read:

42 28-8288. Third or subsequent offense

43 A. If a person is convicted of a third or subsequent violation of
44 section 28-8282 or is convicted of a violation of section 28-8282 and has
45 previously been convicted of any combination of convictions of section

1 28-8282 or acts committed in another state that if committed in this state
2 would be a violation of section 28-8282 within a period of sixty months:

3 1. The person is guilty of a class 5 felony.

4 2. The person is not eligible for probation, pardon, suspension of
5 sentence or release on any basis except as specifically authorized by section
6 31-233, subsection A or B until the person has served not less than six
7 months in prison.

8 3. The court shall not suspend the imposition of a prison sentence.

9 4. If in the court's opinion the person has the problem of habitual
10 abuse of alcohol or drugs, the court shall require the person to obtain
11 treatment under its supervision.

12 5. In addition to any other penalty prescribed by law, the person
13 shall pay an additional assessment of one thousand five hundred dollars to be
14 deposited by the state treasurer in the prison construction and operations
15 fund established by section 41-1651. This assessment is not subject to any
16 surcharge. If the conviction occurred in the superior court or a justice
17 court, the court shall transmit the assessed monies to the county
18 treasurer. If the conviction occurred in a municipal court, the court shall
19 transmit the assessed monies to the city treasurer. The city or county
20 treasurer shall transmit the monies received to the state treasurer.

21 6. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE PERSON
22 SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS TO BE
23 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
24 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
25 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
26 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
27 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
28 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

29 B. The dates of the commission of the offense are the determining
30 factor in applying this section.

31 C. A third or subsequent violation for which a conviction occurs as
32 provided in this section shall not include a conviction for an offense
33 arising out of the same series of acts.

34 Sec. 11. Appropriation; purpose; exemption; annual budget
35 request

36 A. The sum of \$6,897,000 is appropriated from the state general fund
37 from deposits made pursuant to section 5-395.01, subsection M, section 5-396,
38 subsection J, section 5-397, subsection D, paragraph 5 and subsection F,
39 paragraph 5, section 28-1381, subsection I, paragraph 5 and subsection K,
40 paragraph 6, section 28-1382, subsection D, paragraph 7 and subsection F,
41 paragraph 7, section 28-1383, subsection J, paragraph 5, section 28-8284,
42 subsection D, paragraph 5, section 28-8286, paragraph 7, section 28-8287,
43 subsection A, paragraph 7 and section 28-8288, subsection A, paragraph 6,
44 Arizona Revised Statutes, in fiscal year 2005-2006 to the department of
45 public safety to be used as follows:

46 1. \$3,000,000 for:

1 (a) Protective body armor.

2 (b) Electronic stun devices.

3 (c) Other safety equipment.

4 2. In addition to any other appropriation made in the general
5 appropriations act for the gang intelligence team enforcement mission
6 (GITEM), the sum of \$3,897,000 for GITEM. If the department of public safety
7 uses any of the monies appropriated for GITEM in the general appropriations
8 act or in this section for an agreement or contract with a city, town, county
9 or other entity to provide services for the GITEM program, the city, town,
10 county or other entity shall provide twenty-five per cent of the cost of the
11 services and the department of public safety shall provide seventy-five per
12 cent of the cost for each agreement or contract.

13 B. If monies received from the deposits prescribed in subsection A of
14 this section do not fully fund the appropriations prescribed by subsection A
15 of this section, the appropriations prescribed by subsection A, paragraphs 1
16 and 2 of this section shall be proportionately reduced.

17 C. The appropriation made pursuant to subsection A, paragraph 2 of
18 this section is exempt from the provisions of section 35-190, Arizona Revised
19 Statutes, relating to lapsing of appropriations.

20 D. The department of public safety shall include in its annual budget
21 request an amount sufficient to adequately fund the department needs
22 prescribed in subsection A of this section.

23 E. It is the intent of the legislature that the department of public
24 safety allocate monies for the GITEM program to encourage multidistrict
25 relations.

26 F. The legislature intends that future fiscal year adjustments to
27 appropriations for the GITEM program shall be based on inflationary costs.